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Charlotte, NC  
AUG 11 2015  
Clerk, US District Court  
Western District NC

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

LUCY HORTON,

Plaintiff,

vs.

CIVIL CASE NO. 3:14-CV-00505

ENHANCED RECOVERY  
COMPANY, LLC.,

Defendant.

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**DECLARATION OF PLAINTIFF'S RESPONSE IN OPPOSITION TO  
DEFENDANT'S MOTION FOR RELIEF**

COMES NOW, the Plaintiff, Lucy Horton who responds to Defendant's Motion for Relief and states:

1. Plaintiff was contacted by Defendant's attorney's office on or about July 2, 2015 to discuss the possibility of a mediated conference.
2. On July 1, 2015 Defendant filed a Motion to Dispense with a Mediation conference.
3. Defendant admits in its Motion for Relief all of the dates, from July 15 and after that they were unable to contact the Plaintiff.
4. Upon Plaintiff returning home there were no messages on her voicemail nor caller id device that displayed Defendant had made as many calls as it references in its Motion for Relief.
5. On August 4, 2015 Plaintiff submitted to the court a Notice of Inability to Mediate Due to Medical ("Notice").
6. Defendant also admits in its Motion for Relief that pursuant to Rule 5 of the Rules Governing Mediated Settlement Conferences in Superior Court Civil Actions states that "[a]ny person required to attend a mediated settlement conference . . . who fails to attend or to pay *without good cause*, shall be subject to the contempt powers of the court and monetary sanctions."

Therefore, Plaintiff becoming ill due to various shots administered to her by two members of the medical profession (her dentist and her doctor) states the facts as a good cause showing.

7. Plaintiff was also called away, out of state to Georgia, for an emergency situation and during that time remained sick and unable to return home as she explains in her Notice that Plaintiff submitted to the court on August 4, 2015.
8. Plaintiff was unable to access email and obviously any mail sent to her from Defendant.
9. During the time of Plaintiff being out of state, Plaintiff became ill due to one of the shots she was administered and was unable to contact the court or the Defendant.
10. Plaintiff was unable to return home immediately and required a family member to prepare her for return to North Carolina.
11. Defendant states that it attempted contact to Plaintiff via the telephone and left several messages. However, Defendant did not find it reasonable to send a letter to Plaintiff until July 28, 2015; thirteen days after their attempted contact with her via the telephone.
12. On August 5, 2015 and for good cause shown, Plaintiff files this Motion in Opposition to Defendant's Motion for Relief.
13. As of August 3, 2015 Plaintiff is still under the care of her dentist.
14. Plaintiff has not failed or refused to attend one or more mediation meetings.
15. Plaintiff was unable from dates July 15 to July 30, 2015 due to circumstances outside of her control.
16. Plaintiff will file a request that the court reinstate the mediation conference.

WHEREFORE, Plaintiff moves the Court to deny Defendant's Motion for Relief and deny sanctions against Plaintiff due to good cause shown.

  
Lucy Horton, Plaintiff

# NOTARY'S VERIFICATION

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

Plaintiff Lucy Horton, having first been duly sworn and upon oath, deposes and says as follows:

1. On this day personally came before me the above-named Affiant, who proved her identity to my satisfaction, and she acknowledged her signature on this Affidavit in my presence and stated that she did so fully understanding that she was subject to the penalties of perjury.

## AFFIRMATION

I hereby affirm that I prepared and have read this Affidavit and that I believe the foregoing Statements in this Affidavit to be true and correct. I hereby further affirm that the basis of these Beliefs is my own direct knowledge of the statement described herein.

Lucy A. Horton  
Lucy Horton  
1732 Vantage Place  
Charlotte, N.C. 28216

Subscribed and Sworn before me this  
6 day of August 2015

Lilke Ann Olsen  
Notary

Commission Expires: 06-18-2017

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of August, 2015, a true and correct copy of was sent by email and the USPS Mail to:

/s/ Scott S. Gallagher

Scott S. Gallagher

Smith, Gambrell & Russell, LLP

50 North Laura Street, Suite 2600

Jacksonville, FL 32202

and

Harold C. Spears

CAUDLE & SPEARS, P.A.

121 West Trade Street, Suite 2600

Charlotte, NC 28202

Lucy Horton  
Lucy Horton